# IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 571 of 2005.

Judgment reserved on:17.5.2005

Date of decision: June 15 , 2007.

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M/s Una Himancha (Food Division) Ltd. & anr. …Petitioner.

Versus.

State of H.P. & ors. …Respondents.

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Coram:
**The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice.**
**The Hon'ble Mr. Justice Surinder Singh, Judge.**

*Whether approved for reporting?*
For the Petitioner(s): Mr. Dushyant Dadhwal, Advocate.
For the Respondent(s): Mr. M.S.Chandel, Advocate General with Mr. R.M.Bisht, Dy. Advocate General for Respondents 1 to 3 and 5.
Mr.Sanjay Vasudeva, Advocate, for Respondent No.4.

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**Deepak Gupta, ACJ.**

The petitioners by means of this writ petition have sought quashing of the communication dated 25.9.2004 (Annexure P-29) whereby plots No.24 and 25 in Phase I and II, Industrial Area, Thaliwal, Una have been allotted to respondent No.4 and prayed that they may not be dispossessed from the aforesaid industrial plots.

The brief facts necessary for disposal of the case are that petitioner No.1 is a Company duly incorporated under the Companies Act, 1952 and petitioner No.2 is the Director of petitioner -Company. Petitioner - Company was set up with the purpose of carrying on the business of manufacturing juices as well as jams, sauces etc. The petitioner- company decided to set up a manufacturing unit in Himachal Pradesh and for this purpose applied to respondent No.2 for allotment of an industrial plot in Thaliwal Industrial Area in Una. This request was acceded to and plots No. 24 and 25 in

Industrial Area, Thaliwal, were leased out in favour of the petitioner-company. As per condition No.(iv) the lessee was required to erect a factory on the industrial plots within 1-1/2 years after obtaining sanction for constructing buildings from the concerned authorities which period could be extended by another period of six months. The lease deed also contained a condition that in case the lessee does not comply with the terms of the lease deed, the lease for allotment of plots would be terminated.

Clause 6(x) reads as follows:-

> "(x) That in the event of the project not materializing or the industry failing, the lease will be terminated and the lesser shall have the first option to acquire on such termination the buildings, machinery etc. at an agreed price of failing that at price determined by a sole arbitrator agreed upon by both the lesser and the lessee or in the absence of sue a sole agreed arbitrators by the arbitrators, one to be appointed by t he lesser and one by the lessee. If the lesser does not exercise vacant possession of the said land after removing any construction made or machinery fixed etc. within a period of two years completed from the date of termination of the lease."

Admittedly, possession of plot No.25 was taken over by the petitioner-company on 8.8.1995 and that of plot No.24 on 14.11.1995. However, no unit was set up and no construction was raised on the plots in question. Thereafter a show cause notice was issued to the petitioners on 26.9.1998. By way of this show cause notice, the petitioners were informed that since they have not raised the construction of the buildings, the respondent No.3 intended to cancel the allotment of the plots. It appears that the petitioners did care to reply to the show cause notice and thereafter another show cause notice was issued on 13.4.1999. Similarly, show cause notices were also issued to the petitioners on 1.5.1999, 7.6.1999 and final show cause notice

was issued on 18.9.1999. The_petitioners did not reply to the show cause notices and an order cancelling the lease deed was passed on 20.11.1999. Thereafter petitioner No.2 on behalf of petitioner No.1 made a representation to respondent No.3 on 17.12.1999 praying that the lease deed may not be cancelled and some time may be given to the petitioner-company to raise construction.

According to the petitioner- company, it also made other representations in November and December, 2000 and on 12.9.2001, it received the last communication from respondent No.3. According to the petitioner this was the last communication and no other communication was ever received by it. The petitioner-company alleges that since it was permitted to deposit amounts and was again registered as an industry in the year 2000, it presumed that extension had been granted to it. According to the petitioner-company, no show cause notice was received thereafter and it was only on 26.5.2005 when petitioner No.2 went to the office of respondent No.3 to deposit arrears of premium that he was informed that the lease deed has been cancelled. It was only then that the petitioners came to know that the plots in question had been allotted by respondent No.4. They immediately thereafter approached this Court. Interim relief was also prayed for by the petitioner-company. This Court on 28.6.2005 had directed that status quo be maintained and further directed that respondent No.5 i.e. Superintendent of Police, Una, shall ensure that the order shall be complied with in letter and spirit. However, after an affidavit was filed by respondent No.5 on 3.8.2005, the stay order was vacated and it was found that even prior to issuance of the interim order, the possession of the plots had been handed over to respondent No.4 who had raised substantial construction thereupon.

The case of the respondents is that the petitioner- company has not come to Court with clean hands. According to the respondents, after the

petitioner-company made various representations, the petitioner-company was granted extension upto 20.6.2000 vide letter dated 19.2.2000. In this letter, it was made clear that in case of failure on the part of the petitioner-company to install machinery before the said date, the cancellation order dated 20.11.1999 would remain in force and the possession of the industrial plots would be resumed. According to the petitioner- company, it had not received this letter. This version of the petitioner-company cannot be believed. In case there was no extension order, how did the petitioner-company remain in possession of the property? The communication dated 19.2.2000 has been sent on the address which is mentioned in the petition itself. There is no manner of doubt that the said letter was sent to the petitioner-company. The earlier order dated 20.11.199 was kept in abeyance on the ground that the petitioner-company would set up its industry by 30th June, 2000. Therefore, when the petitioner-company failed to comply with the extension granted to them, it was not incumbent on the respondents to issue fresh show cause notice. However, the respondents sent a communication dated 5.6.2004 to the petitioner-company at the same address informing that since it had failed to raise construction on or before 30.6.2000, in terms of the stay granted to it vide order dated 28.6.2005, the lease deed is cancelled.

The whole edifice of the petitioner-company is that it had received no communication after 2001 from the respondents. We are unable to accept this contention of the petitioner-company. This contention of the petitioner-company cannot be believed.

We cannot be oblivious to the fact that the industrial plots are granted to set up industries at concessional rates. These industrial plots are granted with the fervent hope that industries will be set up on the land in question. In case such industries are set up, employment is provided to the local people and taxes in the shape of excise, sales tax etc. is paid to the government. The economy of the area gets a boost. In the present case, even as per the case of

the petitioner-company, from 1996 till 2005, except for construction of a shed, no industry was brought into production. No reason has been given as to why for nine long years the petitioner-company failed to set up its industry.

This Court can take judicial notice of the fact that some people get plots allotted only for the purpose of selling the same. This cannot be permitted. We have perused the entire records of the case and find that respondents gave more than ample opportunity to the petitioners to effectively set up an industry. Despite repeated opportunities granted to the petitioners, they failed to set up such an industry. Show cause notices were given to the petitioner-company and order of cancellation of lease deed was passed as far back as in 1999. Thereafter on the request of the petitioners, stay order was kept in abeyance and time for raising the industry was extended upto June, 2000. The factory was still not set up. Therefore, in our opinion, there was no option with the respondents but to resume the plots. These plots have been allotted to respondent No.4 who has already set up the industry after putting into huge amount of money. These plots, therefore, cannot be re-allotted to the petitioner(s).

In view of the aforesaid discussion, we, find no merit in this writ petition and the same is accordingly dismissed with costs assessed at Rs.5000/-. We would, however, like to clarify that in case the petitioner(s) has suffered damages and has not been paid price of the structure erected by it on the plots, it may take appropriate action in accordance with law for recovery of the said amount.

(Deepak Gupta),ACJ,

June 15 , 2007. ( Surinder Singh), J.

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